

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THE BALLINGER COMPANY, :
Plaintiff, :
: :
-against- : Civil Action No.
LEXINGTON INSURANCE COMPANY and : 1:13-cv-00335-KBF
AXIS INSURANCE COMPANY :
: :
Defendants. :
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**MOTION TO SUBSTITUTE THE UNIVERSITY OF PITTSBURGH FOR
THE BALLINGER COMPANY AS A PARTY PURSUANT TO FED. R. CIV. P. 25**

The University of Pittsburgh (“Pitt”), by its undersigned counsel, submit this motion, pursuant to Fed. R. Civ. P. 25(c), for an Order substituting The University of Pittsburgh as plaintiff in place and instead of The Ballinger Company (“Ballinger”) in the above-captioned action, and in support thereof, state the following:

1. On January 15, 2013, Ballinger commenced this declaratory judgment action seeking insurance coverage for liabilities or potential liabilities allegedly arising from its work on the Salk Hall Addition on Pitt’s campus (the “Project”).
2. On March 4, 2016, Ballinger assigned to Pitt all rights, title and interest in and to any and all claims, causes of action, and choses in action asserted, or which Ballinger could assert, related in any way to the Project. The rights, claims and interests assigned by Ballinger to Pitt include, but are not limited to, all of Ballinger’s claims in this pending insurance coverage litigation. A copy of the Settlement Agreement evidencing the assignment is attached hereto as Exhibit A.

3. When an interest is transferred, Federal Rule of Civil Procedure 25(c) provides that “the action may be continued by … the original party unless the court, on motion, orders the transferee to be substituted in the action …” Fed. R. Civ. P. 25(c).

4. “Whether to grant a motion for substitution of parties is committed to the sound discretion of the district court.” *Burns v. Grupo Mexico S.A. De C.V.*, No. 07 CIV. 3496 (WHP), 2007 WL 4046762, at *2 (S.D.N.Y. Nov. 16, 2007).

5. As Ballinger transferred its right, claim and interest in this insurance coverage litigation, Pitt should be substituted for Ballinger as the plaintiff in this action as it is now the true party-in-interest and the case caption should be amended to reflect Pitt as the named plaintiff. *Cf. Greystone Bank v. Peralta*, No. 10 CIV 0695 BMC, 2010 WL 3767619, at *2 (E.D.N.Y. Sept. 20, 2010) (finding Rule 25 party substitution proper where documentary evidence demonstrated transfer of interest in action and underlying agreements).

6. No Defendant will suffer any prejudice in this action as a result of this substitution of the correct parties.

WHEREFORE, The University of Pittsburgh respectfully requests that The University of Pittsburgh be substituted as plaintiff and the caption be amended to reflect this change.

Dated: March 10, 2016

/s/ Paul E. Breene

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CERTIFICATE OF SERVICE

I hereby certify that The University of Pittsburgh's Motion to Substitute the University of Pittsburgh for The Ballinger Company as a Party Pursuant to Fed. R. Civ. P. 25 has been filed through the ECF system, that the notice of filing will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and that they will additionally be sent via Electronic Mail to the following parties:

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Dated: March 10, 2016

/s/ Paul E. Breene
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